

1 IN THE CIRCUIT COURT OF OHIO COUNTY
2 WHEELING, WEST VIRGINIA

3
4 IN RE:

5 TOBACCO LITIGATION CASE NO. 00-C-6000
6 MEDICAL MONITORING CASES

7
8 * * *
9

10 JURY TRIAL

11
12 Whereupon the above-entitled matter came on for
13 hearing before the Honorable Arthur M. Recht at the
14 Ohio County Courthouse, Wheeling, West Virginia, and
15 the proceedings are as follows.
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19 * * *
20

21 VOLUME 4-A

22 September 11, 2001

23 8:30 a.m.

24 * * *

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1 APPEARANCES:

2

3 ON BEHALF OF THE PLAINTIFFS:

4

5 FREDERICK BAKER, Esquire

6 JERRY H. EVANS, Esquire

7 WILLIAM MICHAEL GRUENLOH, Esquire

8 GREGORY LOFSTEAD, Esquire

9 Ness, Motley, Loadholt, Richardson & Poole, a
10 Professional Association, 151 Meeting Street, P.O.
11 Box 1137, Charleston, South Carolina 29402

12 and

13 SCOTT S. SEGAL, Esquire

14 DEBORAH McHENRY, Esquire

15 The Segal Law Firm, 810 Kanawha Boulevard, East,

16 Charleston, West Virginia 25301

17 And

18 DAVID RODES, Esquire

19 Goldberg, Persky, Jennings & White, P.C., 1030 Fifth

20 Avenue, Pittsburgh, Pennsylvania 15219-6259

21

22

23

24

1 APPEARANCES (Cont'd)

2 ON BEHALF OF PHILLIP MORRIS:

3 SAMUEL E. KLEIN, Esquire

4 ANDREW GADDES, Esquire

5 Dechert, Price & Rhoads, 4000 Bell Atlantic Tower,

6 1717 Arch Street, Philadelphia, Pennsylvania

7 19103-2793

8 and

9 DAVID B. THOMAS, Esquire

10 PAMELA L. KANDZARI, Esquire

11 Allen, Guthrie & McHugh, 1300 Bank One Center, P.O.

12 Box 3394, Charleston, West Virginia 25333-3394

13

14

15 ON BEHALF OF LORILLARD TOBACCO COMPANY:

16 J. WILLIAM NEWBOLD, Esquire

17 ADAM E. MILLER, Esquire

18 Thompson & Coburn, LLP, One Mercantile Center,

19 St. Louis, Missouri 63101

20 and

21 PAUL T. FARRELL, Esquire

22 Farrell, Farrell & Farrell, L.C., The Farrell

23 Building, 914 Fifth Avenue, P.O. Box 6457,

24 Huntington, West Virginia 25772-6457

25

1 APPEARANCES (Cont'd):

2

3 ON BEHALF OF R. J. REYNOLDS TOBACCO COMPANY:

4 JEFFREY L. FURR, Esquire

5 MARILYN R. FORBES, Esquire

6 Womble Carlyle Sandridge & Rice, Post Office Drawer

7 84, Winston-Salem, North Carolina 27102

8

9

10 ON BEHALF OF BROWN & WILLIAMSON TOBACCO CORPORATION:

11 FRANK WOODSIDE, III, Esquire

12 MARY-JO MIDDELHOFF, Esquire

13 SCOTT CRISLER, Esquire

14 Dinsmore & Shohl, LLP, 1900 Chemed Center, 255 East

15 Fifth Street, Cincinnati, Ohio 45202-3172

16 and

17 TEENA MURRAY, Esquire

18 Jackson & Kelly, Laconia Building, Wheeling, West

19 Virginia 25332

20

21 (There are other counsel representing interested
parties also present in the courtroom gallery.)

22

23

24

Tuesday Morning Session
September 11, 2001
8:30 a.m.

-- -- --
P R O C E E D I N G S
-- -- --

(In open court with a jury present.)

THE COURT: Be seated, please. Good morning.

I apologize for the little delay. We had a criminal sentencing, and after the sentence, the young man decided he didn't want to go to the penitentiary, so he fell down the stairs. So we had all kinds of problems. So that's just -- that won't happen again.

All right. Mr. Segal, ready to call your first witness, please.

MR. SEGAL: We are, Your Honor. If it please the Court, good morning, ladies and gentlemen, this morning the first thing I would like to do, Your Honor, is I would like to move into evidence and read, publish to the jury MN 100,000.1 and MN 100,000.2.

And, Your Honor, these are stipulations that have been entered into by counsel in this case. And

1 I don't believe the jury has been told. I guess,
2 Your Honor, I should give copies and give the --

3 THE COURT: All right. Do you want me to read
4 the --

5 MR. SEGAL: I was going to show it to them on
6 the ELMO, if that's okay.

7 THE COURT: If that's how you want to present
8 it, that's fine.

9 MR. SEGAL: Is that all right?

10 THE COURT: Sure.

11 THE COURT: Let me just explain to the jury
12 what a stipulation is. Many times, in order to save
13 time, all parties have gotten together -- much work
14 obviously has gone on in this case prior to the time
15 we started trial.

16 One of the things that they have done, they
17 have been able to get together and have stipulated
18 certain evidence so that we don't need any kind of
19 preliminary introduction. It's in. And we all
20 thank the parties, the attorneys, for conserving
21 time and doing that. That will be throughout this
22 trial there will be stipulations. All right.

23 MR. SEGAL: Thank you, Your Honor.

24 Ladies and gentlemen, this is a stipulation

1 regarding the Council for Tobacco Research.

2 The defendants in the above-captioned
3 case hereby stipulate that they were members or
4 sponsors of the Council for Tobacco Research
5 and/or its predecessor, the Tobacco Industry
6 Research Committee, as indicated below:

7 Philip Morris incorporated was a member
8 from 1954 until 1998.

9 R. J. Reynolds Tobacco Company, a member
10 from 1954 until 1998.

11 Brown & Williamson Tobacco Corporation,
12 1954 till 1998.

13 The American Tobacco Company, a member
14 from 1954 until 1994.

15 And Lorillard Tobacco Company, member
16 from 1953 until 1998.

17 MR. WOODSIDE: Excuse me, Mr. Segal. Could you
18 read the footnote also?

19 MR. SEGAL: Yes, I would be happy. Thank you,
20 Mr. Woodside.

21 Ladies and gentlemen, after the American
22 Tobacco Company, there is a little footnote right
23 there, and the footnote reads:

24 American merged with Brown & Williamson

1 in 1994.

2 MR. WOODSIDE: Thank you.

3 MR. SEGAL: Ladies and gentlemen, this is a
4 stipulation regarding the Tobacco Institute
5 membership.

6 The defendants in the above-captioned
7 case hereby stipulate that they were members of
8 the Tobacco Institute during the periods
9 indicated below:

10 Philip Morris incorporated, member from
11 1958 to 1999.

12 Lorillard Tobacco Company, 1958 to 1967,
13 and 1971 to 1999.

14 R. J. Reynolds Tobacco Company, 1958
15 until 1999.

16 Brown & Williamson Tobacco Corporation,
17 1958 to 1987, 1994 to 1999.

18 And the American Tobacco Company, 1958
19 through 1966, and 1988 through 1991.

20 And that little footnote there once again
21 says that the American merged with Brown &
22 Williamson in 1994.

23 Your Honor, having published those stipulations
24 to the jury, I would now like to ask the Court's

1 permission for Mr. Evans to read the responses to
2 Geoffrey Bible and the deposition -- actually it's
3 trial testimony, but it is prior testimony of
4 Jeffrey Bible.

5 It was taken in the State of Minnesota versus
6 Philip Morris, et al., case, the testimony occurred
7 on March the 2nd of 1998. Mr. Bible is the CEO of
8 Philip Morris companies incorporated

9 THE COURT: All right. That may be done. Do
10 you want to take the stand, it will be fine.

11 MR. EVANS: Thank you, Your Honor.

12 THE COURT: Ladies and gentlemen. Throughout
13 this trial, testimony will be offered in the form of
14 prior testimony that has been given by a witness who
15 will not be here in person testifying live,
16 obviously. The testimony you are to hear now is to
17 be accepted just as if the individual who will be
18 referred to, in this case, Mr. Bible, was here in
19 person testifying under oath from the witness
20 stand.

21 -- -- --

22

23

24

1 GEOFFREY BIBLE
2 being first duly sworn in deposition, testifies and
3 says as follows:

4 -- -- --

5 Q. Good morning, Mr. Bible?

6 A. Good morning, sir.

7 Q. And you are presently the chief
8 executive officer of Philip Morris companies?

9 A. Yes.

10 Q. How long have you been chief
11 executive officer, sir?

12 A. Since June 1994. So that's about
13 three and a half years.

14 Q. How long have you been with Philip
15 Morris companies or its predecessors?

16 A. A total of 24 years.

17 MR. SEGAL: On page 6140.

18 Q. But the company would be responsible
19 for its actions, wouldn't it, sir?

20 A. The company is responsible for its
21 actions.

22 Q. And it would be accountable for its
23 actions, wouldn't it?

24 A. I believe every company is

1 accountable for its actions.

2 Q. It must be accountable; correct?

3 A. Must be accountable?

4 Q. Yes.

5 A. Yes, I think that's fair.

6 Q. Under our system of justice, it must
7 be accountable. Would you agree that, under
8 our system of justice, a company should be held
9 accountable for its actions?

10 A. Yes, I think that's reasonable, yes.

11 MR. KLEIN: A short counter, Your Honor.

12 THE COURT: All right.

13 MR. KLEIN: Page 6233.

14 Q. Okay. So it's fair to say that,
15 prior to 1993, rather than 1994, you had no
16 duties or responsibilities or involvement in
17 the domestic tobacco or cigarette business in
18 the United States?

19 A. That's accurate, sir, yes.

20 MR. KLEIN: Thank you.

21 MR. SEGAL: Your Honor, that concludes the
22 first witness.

23 The next witness I would like to read, Your
24 Honor, this is the prior testimony of F. Ross

1 Johnson. It was taken in the State of Minnesota
2 versus Philip Morris, et al., case. Your Honor,
3 this testimony occurred on September the 11th,
4 1997. Mr. Johnson was the president of RJR
5 Industries from 1985 through 1987, and then was CEO
6 of RJR-Nabisco from January 1987 to 1989.

7 THE COURT: All right.

8 -- -- --

9 F. ROSS JOHNSON

10 being first duly sworn in deposition, testifies and
11 says as follows:

12 -- -- --

13 Q. Would you please state your name and
14 address for the record.

15 A. Frederick Ross Johnson at
16 [DELETED]

17 Q. Mr. Johnson, what was your last date
18 of employment with RJR Nabisco?

19 A. February 10th, I believe,
20 approximately 1989.

21 Q. And your title at the time you left
22 the company was Chief Executive Officer?

23 A. President and Chief Executive
24 Officer.

1 MR. SEGAL: Do you want to read your parts now
2 or at the end?

3 MS. FORBES: At the end.

4 Q. I would like to call your attention
5 to the paragraph that begins in the second
6 column after numbered paragraph 4, the one that
7 reads, We accept an interest in people's health
8 as a basic responsibility paramount to every
9 other consideration in our business. Do you
10 see that?

11 A. Yes.

12 Q. Was that statement a true statement
13 as far as you were concerned when you were CEO
14 of RJR Nabisco?

15 A. Never discussed.

16 Q. Well, as the CEO of the company --

17 A. Yeah.

18 Q. -- would you agree that RJR Nabisco
19 accepted an interest in people's health as a
20 basic responsibility paramount to every other
21 consideration in your business?

22 A. No.

23 Q. I'm reading it from here, yes, but
24 I'm asking if the statement itself, that,

1 quote, We accept an interest in people's health
2 as a basic responsibility paramount to every
3 other consideration in our business, closed
4 quote, was true when you were the CEO of RJR
5 Nabisco in 1987?

6 A. No.

7 Q. Was the fact that cigarette smoking
8 was even suspected as a cause of serious
9 disease or illness a matter of deep concern to
10 the company when you were CEO in 1987?

11 A. Not to my knowledge.

12 Q. With regard to the question of the
13 linkage of smoking and disease, that was sort
14 of a hot issue, wasn't it, while you were CEO
15 of the company?

16 A. It was an issue.

17 Q. You were certainly aware that that
18 issue was out there; correct?

19 A. Of course.

20 Q. And as a result of that issue being
21 something that you were aware of, would you
22 have expected to have known whether or not the
23 company had ever drawn a conclusion internally,
24 whether there was a link between smoking and

1 lung cancer?

2 A. No.

3 Q. And why is it that, as chief
4 executive officer of the company, you believe
5 you wouldn't have been aware of that?

6 A. I had no interest.

7 Q. You had no interest?

8 A. None.

9 Q. So if I'm understanding your
10 testimony correct, while you were CEO of the
11 company, you did not feel that you had a duty
12 to get to the bottom of the -- of the question
13 of whether smoking caused disease in humans?

14 A. It wasn't my function.

15 Q. And as CEO, you didn't believe that
16 it was your duty to find out definitively what
17 your scientists knew about the relationship
18 between smoking and disease in humans?

19 A. The responsibility of the scientific
20 community and the government and the
21 regulators.

22 Q. And you felt no responsibility for
23 that?

24 A. Felt the responsibility to provide

1 them the product information so that they could
2 come to appropriate conclusions.

3 Q. What do you mean when you say, quote,
4 the product information, closed quote?

5 A. The product information about the
6 products -- the product that's being
7 manufactured and sold, all of that
8 specification that was sent regularly to the
9 appropriate authorities for their review and
10 inspection and conclusion.

11 Q. With regard to the knowledge of
12 scientists based upon research done by your
13 company, however, with regard to the issue of
14 smoking and health, did you feel any obligation
15 as the CEO to familiarize yourself with what
16 the findings were in the company's files?

17 A. No.

18 Q. And you never undertook that
19 responsible at any time while you were --

20 A. Never.

21 Q. -- the chief executive officer?

22 A. Never.

23 Q. As the chief executive of the
24 company, did you feel that you had any

1 responsibility to view and review the entire
2 issue of smoking and health to get to the
3 bottom of whether or not it was an open
4 question or whether smoking was linked to
5 disease in humans?

6 A. No.

7 MR. SEGAL: There is some counter-designations,
8 Your Honor.

9 THE COURT: All right. Ms. Forbes?

10 MS. FORBES: Good morning, ladies and
11 gentlemen. We have not had a chance to meet. My
12 name is Marilyn Forbes. Bill Latham and I represent
13 R. J. Reynolds, as well as Jeff Furr. We will be
14 reading the counters.

15 THE COURT: This is now the same testimony?

16 MS. FORBES: This is Mr. Johnson continuing.
17 Beginning on page 31.

18 Q. Mr. Johnson, would you agree that it
19 is a primary obligation for a corporation
20 selling to consumers to be truthful and
21 communicating with the consumers about the
22 products that they sell?

23 A. I don't understand.

24 Q. Well, in your years of experience in

1 various consumer products businesses, would you
2 agree that a primary duty of a consumer-related
3 business is to be truthful in communicating to
4 consumers about those products?

5 A. I think that goes for life, itself.
6 It should be truthful.

7 Q. I'm sorry?

8 A. It should be truthful.

9 Q. And that certainly would be the case
10 in the business world as well; correct?

11 A. I would hope so.

12 Q. And that, with regard to the consumer
13 related products, would be true with regard to
14 product labeling; is that correct?

15 A. Yes.

16 MS. FORBES: Continuing.

17 Q. Before the merger of Nabisco with RJR
18 industries -- and I believe that was 1985; is
19 that correct?

20 A. Yes.

21 Q. Before that merger took place, had
22 you had any experience in the tobacco business?

23 A. Only as a consumer.

24 Q. When the merger took place in 1985,

1 what was your position with the company,
2 with --

3 A. The new company?

4 Q. The new merged company?

5 A. I was president.

6 Q. And that was at a time when it was
7 still called Reynolds?

8 A. Reynolds Industries.

9 Q. Industries. As president of Reynolds
10 Industries, did you become required at that
11 point to familiarize yourself somewhat with the
12 tobacco side of the business?

13 A. No, not much. I primarily worked
14 on -- it was a five billion dollar merger, and
15 the major job was integrating all of the
16 Nabisco properties, including tobacco, together
17 with the comparable products in Reynolds.

18 Q. And as you move forward from 1985
19 until January of 1987 when you became the
20 president and CEO of RJR Nabisco, did you have
21 occasion during that period of time to
22 familiarize yourself with the tobacco side of
23 the business?

24 A. Not particularly. It was a peer

1 group that was running. Besides, I really came
2 from a -- got into the tobacco business, of
3 course. I had other businesses, too, in '87.

4 Q. Beginning then in 1987 when you
5 became the CEO, did you have occasion at that
6 point to familiarize yourself with the tobacco
7 side of the business?

8 A. Yes.

9 Q. What did you do to familiarize
10 yourself with that part of the RJR Nabisco
11 business?

12 A. By this you are facing managing
13 practices. The tobacco company reported to me,
14 so you had certain areas that you reviewed in
15 terms of their strategic plan's budgets.

16 Q. How were you staffed at the CEO level
17 to deal with the various parts of the
18 business? What was your organization?

19 A. My organization, I had the --
20 reporting to me -- I was here in Atlanta. All
21 the operations were outside. We had no
22 operating people here in Atlanta, and we had --
23 tobacco was in Winston-Salem, Delmonte was in
24 Coral Gables, and Nabisco up in New Jersey, and

1 then plus all of our international operations
2 that flowed in underneath those.

3 Then, reporting to me, I had a chief
4 financial officer.

5 Q. And it's your testimony that, prior
6 to me handing it to you just now, you had never
7 seen the Frank Statement to cigarette smokers
8 before?

9 A. Never saw that.

10 Q. Did anyone during the course of time
11 that you were the CEO of RJR Nabisco mention to
12 you that there had been a publication of this
13 type put out in the 1950s by the tobacco
14 company to its cigarette smoking consumers?

15 A. No.

16 Q. And it was the position of the
17 management of RJR Tobacco in 1987 that you
18 believe that people were entitled to know where
19 RJR Tobacco stood with regard to issues of
20 smoking and health?

21 A. The company knew -- the customers
22 knew exactly where we stood. It was right on
23 our packages.

24 Q. And in advertisements that the

1 company might --
2 A. Yes.
3 Q. -- run?
4 A. Yes.
5 Q. Public statements that the company
6 would make?
7 A. Warning labels were on all the ads.
8 Q. And to the extent that there were
9 statements made beyond labels, such as
10 advertisements of the kind that Exhibit 2
11 purports to be?
12 A. I can't comment on something that
13 happened in 1954. I don't know the background,
14 I don't know that knowledge, I don't know the
15 environment that it came out of.
16 Q. If --
17 A. They might have felt this was --
18 that's how they felt, and they might have
19 passed a polygraph on that.
20 Q. Was that your understanding as the
21 CEO of RJR Tobacco in 19 --
22 A. I wasn't the head of RJR Tobacco.
23 Q. You had no interest whether or not
24 smoking causes cancer?

1 A. I had no interest in what either the
2 company's position was or the tobacco
3 industry. It depended. Whatever the
4 regulators said they wanted us to do, we would
5 do.

6 Q. Well, you are aware --

7 A. Every package that went out from '64
8 spelled out the potential hazards. That was
9 our job. My job was to do that.

10 Q. Are you aware that the Surgeon
11 General had believed since '64 that smoking did
12 cause disease in humans?

13 A. Of course. It's on the label from
14 the Surgeon General.

15 Q. And that every Surgeon General since
16 that time had publicly stated that smoking is
17 related to all manner of disease, including
18 lung cancer; correct?

19 A. They certainly have. I can't be
20 specific.

21 Q. And is it your position that RJR
22 agreed with the Surgeon General as to those
23 issues?

24 A. I did not agree or disagree. It was

1 up to the regulators and the Surgeon General to
2 determine what it is they wanted us to do.

3 Q. That's with regard to what went on
4 the labeling of the packages; correct?

5 A. With respect to the product.

6 Q. First of all, it's been some time
7 since we started your deposition. So could you
8 remind us of when you were the CEO of the
9 company?

10 A. January 1st, '87, till the end of '88
11 effectively.

12 Q. So basically --

13 A. Really, about November 30th, because
14 then I went into transition.

15 Q. November 30th of 1988?

16 A. Yeah. Once KKR, the deal went
17 through --

18 Q. Okay.

19 A. -- then I was a caretaker.

20 Q. So it's not quite two years; is that
21 right?

22 A. For all practical purposes.

23 Q. Sir, do you have any degree or
24 particular experience in biology?

1 A. No.

2 Q. Do you have any degree or expertise
3 in chemistry?

4 A. No.

5 Q. Same question for physiology?

6 A. No.

7 Q. Do you have any degree or expertise
8 in psychiatry?

9 A. No.

10 Q. Do you have any degree or expertise
11 in pathology or pharmacology?

12 A. No.

13 Q. Do you have any degree or expertise
14 in epidemiology?

15 A. No.

16 Q. Should the jury in this case
17 understand that you are expressing any expert
18 opinion in any of these areas?

19 A. No.

20 Q. Turn, if you would, to Exhibit 2,
21 which is entitled a Frank Statement to
22 Cigarette Smokers. Have you ever seen that
23 either around the time it was published back in
24 '54 or at any time prior to your deposition?

1 A. No. I didn't live in America.

2 Q. Did you ever ever -- all right. Did
3 you ever see it once you --

4 A. Came to America?

5 Q. Arrived in America?

6 A. No. They would have to do it in
7 French.

8 Q. Did you have a belief while you were
9 the chief executive of R. J. Reynolds
10 industries that you had any responsibility to
11 be aware of historical business of RJR Tobacco?

12 A. That I had that responsibility? No.

13 Q. Did you undertake any effort to make
14 any kind of an historical review of the
15 business of RJR Tobacco?

16 A. No. I live in the present.

17 Q. Did RJR Tobacco, during your period
18 as CEO of RJR Nabisco, have a separate board of
19 directors?

20 A. Yes, it did.

21 Q. Did you serve on that board?

22 A. No.

23 MS. FORBES: Thank you.

24 MR. SEGAL: Your Honor, that would conclude the

1 testimony of F. Ross Johnson.

2 THE COURT: All right.

3 MR. SEGAL: I would now like to, if I may, Your
4 Honor, read to the jury the prior testimony of
5 Andrew Shindler. It was taken in the State of
6 Minnesota case versus Philip Morris, et al., on
7 March the 5th, 1998, Your Honor. Mr. Shindler was
8 the president and CEO of RJR Tobacco company.

9 THE COURT: All right.

10 -- -- --

11 ANDREW SCHINDLER,
12 being first duly sworn in deposition, testifies and
13 says as follows:

14 -- -- --

15 Q. Please state your name and spell your
16 last name.

17 A. Andrew J. Shindler,
18 S-c-h-i-n-d-l-e-r.

19 Q. Sir, you are the present president
20 and CEO of RJR Tobacco Company?

21 A. Yes, I am.

22 Q. And you have duties to the public
23 health; correct?

24 A. Yes, I do.

1 Q. And would you agree that you can't
2 place profit above the public health?

3 A. I would agree with that, yes, sir.

4 Q. And you would agree that the
5 obligation and duty of public health is your
6 paramount responsibility as the CEO and
7 president of RJR Tobacco Company?

8 A. I -- I believe with this product --
9 and we are talking about cigarettes here --
10 given the risk of the product, that it is a
11 paramount responsibility.

12 Q. It is the paramount responsibility;
13 is it not, sir?

14 A. I would say it is the paramount
15 responsibility. However, I would like to add
16 to that that I feel a similar paramount
17 responsibility for the safety and health of our
18 employees and, as I said before, people in the
19 community in terms of how we comply with
20 environmental laws.

21 So I feel a responsibility for health
22 related and safety related issues for those
23 three constituents in the course of doing my
24 job.

1 Q. Fair enough, fair enough. You have a
2 paramount responsibility to protect the public
3 health, whether it's your employees, your
4 customers, or the community at large; correct?

5 A. Yes, sir.

6 Q. Now, in 1996, RJR was the second
7 largest tobacco company in the United States,
8 manufacturing one of every four cigarettes sold
9 in the domestic market.

10 A. Yes, sir.

11 Q. Does that position hold today?

12 A. Yes, sir.

13 Q. And have you become aware during the
14 course of your tenure as president and after
15 you became aware of the Frank Statement that
16 this was published throughout the United
17 States?

18 A. Yes. As I became aware of this, it's
19 my understanding that it, as I recall, ran in
20 something like 188 cities or around the United
21 States for a day or so back in 1954.

22 Q. Now, RJR Tobacco Company or RJR
23 Nabisco has never revoked these
24 representations, have they?

1 A. No, sir, not that I know of.

2 Q. You have never seen any printed
3 publication prepared and distributed by RJR
4 which said we revoke the Frank Statement?

5 A. No, sir --

6 Q. These --

7 A. -- I have never seen that.

8 Q. These duties and representations to
9 the public remain right up to today, don't
10 they, sir?

11 A. Yes. This statement has never been
12 revoked, so this -- no, as you already asked
13 me, this statement has never been revoked.

14 Q. Did RJR provide that information to
15 the public?

16 A. Provide what information?

17 Q. Its knowledge of carcinogens in the
18 additives and flavorants and humectants.

19 A. I don't know of any carcinogens that
20 we have in flavors and additives and humectants
21 and all that sort of stuff. And if there is
22 any, I don't think we ever published that list
23 to -- to the public. But we published a list
24 of additives in 1994.

1 Q. Regardless of how many there are, the
2 industry never convened a blue ribbon panel
3 after any of those Surgeon General's reports to
4 determine what that blue ribbon panel would say
5 on whether smoking caused disease, did it?

6 A. No.

7 Q. Right up to today, it's never done
8 that, has it?

9 A. That's right.

10 Q. Now, in 1959, you are aware, are you
11 not, that RJR was aware of many carcinogens in
12 its smoke that had a distinct possibility would
13 have a carcinogenic effect on the human
14 respiratory system?

15 A. I believe the company was aware there
16 were a lot of compounds -- a lot of people were
17 -- that were possibly carcinogenic that were in
18 the cigarettes.

19 MR. SEGAL: Thank you.

20 And there are some counter-designations, Your
21 Honor.

22 THE COURT: All right.

23 MS. FORBES: Continuing with the deposition of
24 Andrew Shindler.

1 Q. What happened in -- I think it was
2 November 1968?

3 A. Well, in November of '68, I landed in
4 Vietnam.

5 Q. What unit were you with in Vietnam?

6 A. I was with the Second Battalion, 7th
7 Calvary, First Air Calvary Division.

8 Q. Where were you stationed when you
9 first got to Vietnam?

10 A. Oh, up about -- up in Tay Ninh
11 Province, about 85, 90 miles northwest of
12 Saigon up along the Cambodian border.

13 Q. And your rank then was what, sir?

14 A. I was a First Lieutenant.

15 Q. And what were your duties along the
16 Cambodian border?

17 A. Well, the first six months, I was an
18 infantry platoon leader out in the field, out
19 in the boonies, as we used to say.

20 After doing that for six months, I was
21 assigned to the battalion headquarters fire
22 base, which was out -- still out in the jungle,
23 but in a fixed position working on the
24 battalion staff.

1 And then, my last two months in Vietnam,
2 I was assigned to the brigade staff back in Tay
3 Ninh City, which was their larger position and
4 headquarters.

5 Q. In that first six months you were
6 there, sir, was that a combat assignment?

7 A. The whole -- well, the first six
8 months was combat out in the jungle along the
9 Cambodian border. The whole twelve months was
10 a combat assignment.

11 Q. When did you leave the Army,
12 Mr. Schindler?

13 A. In November of '70.

14 Q. And at the time you left the Army,
15 what was your rank?

16 A. I was a captain.

17 Q. Were you honorably discharged?

18 A. Yes, I was.

19 Q. Now, at the time you joined R. J.
20 Reynolds in 1974, did the packs of cigarettes
21 that R. J. Reynolds was marketing carry the
22 Surgeon General's warning?

23 A. Yes.

24 Q. Has that been the case ever since?

1 A. Yes.

2 Q. Do you know when those warnings first
3 went on?

4 A. Well, I believe it was '66.

5 Q. At the time you joined R. J.
6 Reynolds, did R. J. -- did advertisements for
7 R. J. Reynolds cigarettes carry the Surgeon
8 General's warnings?

9 A. Yes, they did.

10 Q. Is that -- and that that has since
11 been true for the period at R. J. Reynolds?

12 A. Yes.

13 Q. Now, you said earlier in response to
14 some questions yesterday, I believe, that you
15 think cigarettes do carry risk of some health
16 consequences and serious disease.

17 A. Yes. I believe people that smoke
18 have an increased risk of lung cancer, heart
19 disease, emphysema and other diseases that are
20 associated with smoking.

21 Q. Before joining Reynolds in '74 and
22 before becoming CEO in '95, I believe, did you
23 consider -- did you consider yourself, the
24 issues raised by working in a company that makes

1 a product, that carries health risks?

2 A. Yes. When I interviewed with RJR and
3 they made the job offer, I -- one of the
4 things I had to consider before I, you know,
5 would take the job or accept the job was their
6 -- you know, the health risks of the product.

7 You know, I believe then as I believe now
8 that there are health risks with this product,
9 and so I had to, for my own personal ethical
10 standpoint, work through that issue, and was I
11 comfortable with it.

12 And that's back when I was at Borden, of
13 course, when I was making that decision. And,
14 you know, I made that decision on the basis,
15 first of all, that it was a legal product, but
16 also from the standpoint that it is a risky
17 product, but that people, from my own ethical
18 standpoint, needed to be aware of that risk,
19 and I --

20 Q. Did you go through that same type of
21 analysis before becoming CEO?

22 A. Well, my view about the risk of the
23 product has evolved over time from when I first
24 joined as I learned about -- more about the

1 product as a plant manager, head of
2 manufacturing and so forth, and more about the
3 company's efforts to develop products that
4 address the risk issues with smoking.

5 That became part of my fundamental
6 ethical basis of being in this business and
7 being comfortable with it; that we make a
8 product that has risk, that people need to be
9 and must be aware of those risks, and I need to
10 be working for a company that is working on
11 products to reduce that risk.

12 On that basis, with all the issues that
13 surround this industry, I'm very comfortable
14 being in this business, the fact that we are
15 working on products to reduce those risks.

16 Q. Now, since 1964, what has been the
17 position of the federal government, whether
18 cigarettes cause disease?

19 A. The position of the federal
20 government has been that cigarettes cause
21 disease.

22 Q. Now, has the federal government, with
23 those beliefs in mind, allowed cigarettes to
24 remain a legal product in this country?

1 A. Yes. They are a legal product
2 everywhere in the country that I know of.

3 Q. What department at R. J. Reynolds is
4 responsible for product design and development,
5 Mr. Schindler?

6 A. Research and development.

7 Q. Do you know how many employees there
8 are in the Research & Development Department?

9 A. About 430, 440 people.

10 Q. Are there professionals there with
11 doctorates?

12 A. Yes.

13 Q. Are any of them involved in the
14 scientific community outside of the company?

15 A. Yes, they are.

16 Q. Could you describe some of their
17 activities?

18 A. Well, a number of those folks have
19 adjunct professorships at medical schools and
20 graduate schools of science. They do that, you
21 know, to develop their professional skills and
22 keep current in their core scientific
23 discipline. So they work in different
24 institutions in an adjunct way.

1 Q. Does R. J. Reynolds have
2 toxicologists in its R&D Department?

3 A. Yes, we have toxicologists.

4 Q. Has it had physical chemists up until
5 1994?

6 A. Yes.

7 Q. Has it had people trained in
8 pharmacology up till 1994?

9 A. Yes.

10 Q. Why has RJR invested in and supported
11 developments for lower tar and nicotine
12 products?

13 A. Because it was the consensus of the
14 public health and scientific/medical community
15 throughout the world that the -- the most
16 significant approach to try to address the
17 issues of risk and cigarettes is through
18 general reduction strategy which was to bring
19 down the tar.

20 And that's how Reynolds and in fact all
21 the companies in the U.S, the U.S. companies
22 that developed the technologies to bring down
23 tar in cigarettes, and that was the strategy
24 that the medical community, public health

1 community felt was the best one. And that is
2 what the industry pursued.

3 And Reynolds, you know, made a
4 significant contribution to those advancements
5 to try to deliver products that smokers wanted
6 that had substantial reductions in tar. And
7 that is how Reynolds, you know, as well as the
8 rest of the industry became involved in that,
9 in that strategic direction.

10 MS. FORBES: Thank you.

11 MR. SEGAL: Your Honor, that concludes

12 Mr. Schindler's testimony.

13 MR. SEGAL: The next testimony we wish to
14 offer, Your Honor, is the prior testimony of Martin
15 Orlowsky. It was taken in Brown versus Philip
16 Morris, et al., on October 16th, 1993. Mr. Orlowsky
17 was at the time of this deposition the executive
18 vice president of marketing for Lorillard Tobacco
19 Company. And we would like to, Your Honor, proffer
20 this testimony in video form.

21 MR. THOMAS: All right. We have a preliminary
22 matter to discuss about the video.

23 THE COURT: All right.

24 MR. THOMAS: May we approach?

1 (At benchside:)

2 MR. THOMAS: Your Honor, David Thomas for the
3 defendants. We learned yesterday during opening
4 statements that the video depositions that
5 plaintiffs intend to use contain, not only the video
6 portion, but a rolling script of the testimony of
7 the witness.

8 And the rule --

9 MR. NEWBOLD: This is the transcript, Your
10 Honor.

11 THE COURT: Like a close captioned television?

12 MR. BAKER: The purpose was to make the
13 testimony as understandable as possible to the
14 jury. If that makes it more understandable, I don't
15 understand the problem.

16 MR. THOMAS: Rule 32 on presentation of the
17 deposition, it clearly says that the parties may
18 offer in stenographic or nonstenographic form. May
19 I suggest to the Court that, if the deposition in
20 video form is not sufficient quality for the jury to
21 understand, then the plaintiffs should be required
22 to read the depositions as we have done so far. The
23 rule is quite clear. It's 32(c.)

24 THE COURT: You are objecting to the use of the

1 closed caption?

2 MR. THOMAS: That's correct, Your Honor. It
3 would be just like having the witnesses we just had
4 here reading from the deposition transcript as well
5 as having the transcript flashed up on the screen.

6 THE COURT: I'm going to have to look at it so
7 I can make a determination.

8 (In open court:)

9 THE COURT: Ladies and gentlemen this is one of
10 those times that I need to -- well, what I really
11 need to do is take a look at the evidence in advance
12 before I make a ruling on it, so I would ask you
13 please to go to the jury room and we shall be with
14 you as soon as we possibly can.

15 (In open court without a jury present:)

16 THE COURT: All right. Do you want to play it
17 so I can take a look at it?

18 (Videotape played:)

19 Q. Mr. Orlowsky, I understand that you
20 are the president of Lorillard Tobacco Company.

21 A. That is correct.

22 Q. With respect to day-to-day
23 operations, are you the top man in the company?

24 A. Yes, I am.

1 Q. Okay. And do you set policies for
2 the company?

3 A. Yes, I do.

4 Q. All right. And did you become
5 president approximately two years ago?

6 A. January of 1999.

7 (End of videotape section)

8 THE COURT: All right. Why is it that you want
9 the closed caption?

10 MR. BAKER: Just because there are instances
11 when it is not as clear as perhaps it could be with
12 the video, and the purpose is to make the evidence
13 as presentable to the jury as possible. This allows
14 the jury to judge his demeanor on the one hand and
15 to also make sure that they understand each and
16 every word that he says.

17 THE COURT: Well, I would have to say that, if
18 the video were of poor quality and if it were
19 difficult to understand -- so far I don't see that.
20 Now, do you want me to -- to watch the whole thing?
21 It, I believe, is -- the jury can make a
22 determination based on what they see and hear
23 without the additional caption. So I mean, is there
24 a part where it is either -- it's not audible or

1 it's not clear? I could understand that. I agree
2 with that. But I don't know.

3 MR. BAKER: I understand, Your Honor. With
4 respect to this deposition, there are going to be
5 other depositions, most likely.

6 THE COURT: If there are, we will have to rule
7 on that on an ad hoc basis, and anything that will
8 assist the jury in understanding, that's all I care
9 about. And so at this point the objection will be
10 sustained, and each video will be then determined on
11 its own.

12 I don't know -- so we don't have to go back and
13 forth, I don't know how to do this in advance.

14 I see you have a Spears deposition. I don't
15 know if that's going to be a problem.

16 MR. BAKER: No, Your Honor, we will play that
17 without closed captioning as well.

18 THE COURT: All right, that's fine. I just
19 thought I would let you know this. I have not told
20 the jury and will not. There apparently has been a
21 serious attack on the World Trade Center in New
22 York. Two airplanes have crashed into the, building
23 and it's all in bad shape.

24 I think you all should know that. There is no

1 concern here. I mean, one thing about Wheeling,
2 bless it, I don't think anybody wants to come to
3 Wheeling. We are quite safe. But it's not good.

4 MR. WOODSIDE: Is it intentional or
5 accidental?

6 THE COURT: No. It was deliberate,
7 apparently. It's on television now. There was one
8 attack, and then all of the sudden -- everybody was
9 watching, and then all of the sudden there came,
10 now, two separate attacks.

11 So I don't know if any of you have, as far as
12 people in the World Trade Center, that's the only
13 thing -- that's the only reason I bring it up.

14 MR. NEWBOLD: Your Honor, I have family flying
15 in New York today.

16 THE COURT: Well, you should know about it. If
17 you want to do anything, you can do anything you
18 want to do.

19 MR. NEWBOLD: Is that a plane leaving from New
20 York?

21 THE COURT: No.

22 THE LAW CLERK: The first was a passenger
23 plane, but they don't think it is now. It was like
24 a Cessna. The second one was a Cessna.

1 THE COURT: They were not commercial
2 airplanes.

3 MR. NEWBOLD: Thank you, Your Honor.

4 THE COURT: This -- I do believe, so far, it's
5 a deliberate attack on, again, on the World Trade
6 Center as it was about seven or eight years ago, but
7 in a different manner.

8 So that's it. But I'm not going to tell the
9 jury. At noon, they may find out. Any of you have
10 any concern about that, you are free to go and do
11 anything you want to do.

12 All right. Bring in the jury.

13 (In open court with a jury present.)

14 THE COURT: All right. Be seated, please. All
15 right, now we are ready to view the video deposition
16 of a gentleman by the name of Orlowsky.

17 MR. SEGAL: That is correct, Your Honor.

18 THE COURT: All right.

19 -- -- --

20 MARTIN L. ORLOWSKY

21 being first duly sworn in deposition, testifies and
22 says as follows:

23 -- -- --

24 Q. Mr. Orlowsky, I understand that you

1 are the president of Lorillard Tobacco Company?

2 A. That is correct.

3 Q. With respect to day-to-day
4 operations, are you the top man in the company?

5 A. Yes, I am.

6 Q. Okay. And do you set policies for
7 the company?

8 A. Yes, I do.

9 Q. And did you become president
10 approximately two years ago?

11 A. January of 1999.

12 Q. All right. And when you became
13 president of Lorillard, Mr. Orlowsky, am I
14 correct that you looked at some of the policies
15 of the company and you made a determination
16 that, as president, some of those policies
17 should be changed, particularly with respect to
18 smoking and health issues?

19 A. As part of my assumption of the
20 responsibility as CEO, I did review various
21 policies and approaches to the business and
22 made some changes where I felt it was
23 appropriate to do so.

24 Q. All right. And am I correct that, up

1 until the time you became -- Lorillard had
2 never admitted publicly that smoking caused any
3 disease?

4 A. Well, could you define publicly.

5 Q. Well, had Lorillard ever admitted in
6 a court of law that smoking caused any disease
7 prior to the time you became president?

8 A. I'm not quite sure exactly, but I
9 don't believe we took that position literally.

10 Q. All right. Am I correct that, in
11 June of this year, the year 2000, you went down
12 to Florida and swore under oath, you admitted
13 for the first time on behalf of Lorillard that
14 smoking caused lung cancer?

15 A. Yes. In my testimony in the case in
16 Florida, I stated that Lorillard's position was
17 that we agreed with the Surgeon General and
18 other public health authorities' views that
19 smoking caused lung cancer and other diseases.

20 Q. All right. And you said that
21 unequivocally and no more weaseling around;
22 Lorillard was going to in the future admit that
23 smoking caused lung cancer?

24 UNIDENTIFIED SPEAKER: Objection to form.

1 A. Well, I believe I said that where
2 appropriate, we would state our view as such,
3 yes.

4 Q. Are you prepared today, sir, to admit
5 to the jury in the Falise case that smoking can
6 cause lung cancer?

7 A. Yes.

8 Q. All right. Are you prepared to admit
9 to the jury today under oath that smoking can
10 cause other serious diseases?

11 A. Yes.

12 Q. All right. Which diseases do you
13 include among the diseases that Lorillard will
14 admit to this jury can be caused by smoking?

15 A. Well, certainly lung cancer and any
16 of the diseases that -- in general, we agree,
17 in general terms, with the Surgeon General's
18 findings and other public health authorities in
19 terms of specific diseases.

20 Certainly we would agree that diseases
21 that are identified in the warning statements
22 that we carry on our packs of cigarettes and
23 other places where required by law, that those
24 diseases would be caused by smoking.

1 However, I am not an expert, obviously;
2 I'm not a scientist; I'm not a medical doctor.
3 There are many other diseases listed in the
4 Surgeon General's report and, as to the
5 specifics of some of those diseases, I couldn't
6 state today as to what our position literally
7 would be.

8 Q. All right. With respect to
9 emphysema, I take it then that you admit to
10 this jury under oath that smoking can cause
11 emphysema?

12 A. Yes.

13 Q. Now, Mr. Orlowsky, your predecessor
14 as president of Lorillard was Dr. Spears?

15 A. That's correct.

16 Q. Are you aware that Dr. Spears has
17 testified repeatedly that it was Lorillard's view
18 there was no scientific proof that smoking
19 caused these diseases? Are you familiar with
20 that?

21 A. Yes.

22 UNIDENTIFIED SPEAKER: Object to the form
23 of the question.

24 Q. You yourself have testified under

1 oath on a number of occasions as recently as
2 1998 that there was no proof that smoking
3 caused disease in review. You are familiar
4 with that, are you now?

5 UNIDENTIFIED SPEAKER: Object to the form
6 of the question.

7 A. Yes, I have testified to that.

8 Q. Did you conclude, Mr. Orlowsky, that
9 Lorillard's prior position, refusing to admit
10 causation, was out of step with reality?

11 A. I did not view it that way. My view
12 was that Lorillard's position in the past was
13 based on a standard of science that was
14 certainly appropriate and deemed effective by
15 those that were making those policy statements,
16 a standard of science that involved the
17 physical standard of evidence as to whether or
18 not any particular -- in this case cigarettes,
19 caused disease,

20 By virtue of the fact that it has not
21 been demonstrated that there had been no
22 identification of the mechanism of --
23 biological mechanism by which disease may be
24 caused by cigarettes, ability to identify the

1 constituents or components in smoke or
2 otherwise in the product that might cause a
3 problem, and by virtue of the fact that it was
4 not -- no one had to that point in time
5 demonstrated through laboratory experiments,
6 animal studies, inhalation studies and so
7 forth, to replicate anything that might result
8 in demonstrating that any part of the cigarette
9 product might cause disease, based on that
10 standard of science, the company took the
11 position that it hasn't been established.

12 And even though today I have changed the
13 policy, and members of our organization are
14 wholly aware of that, today, there are
15 scientists who work in our research and
16 development area who still hold to that
17 standard, that what I call physical standard of
18 science.

19 The difference is that I decided that
20 the -- another standard of science, which is
21 over time becoming acceptable certainly by the
22 public health authorities, becoming an
23 acceptable basis by which one might conclude
24 that, in this case cigarettes, would cause or

1 could cause diseases. The epidemiological
2 standard.

3 I decided that our reliance on the
4 so-called, what I call the physical standard,
5 was -- you know, we were at a point in time
6 where we should adopt the epidemiological
7 standard and no longer rely exclusively on this
8 physical standard.

9 Q. Do you know for how long virtually
10 everyone outside the tobacco industry has
11 accepted the fact that smoking caused lung
12 cancer?

13 A. No, I don't.

14 Q. You know the Surgeon General in the
15 1960s concluded that smoking caused lung
16 cancer?

17 A. Yes, I do.

18 Q. And you are aware that your company
19 for 35 odd years maintained there was an open
20 controversy; and that it was not proven that
21 smoking caused lung cancer?

22 UNIDENTIFIED SPEAKER: Object to the
23 form.

24 A. Yes. As I said, our company relied

1 on a physical standard of science, which is a
2 very traditional and acceptable to this day, I
3 believe -- again, I'm not a scientist for sure
4 -- but a very acceptable standard to
5 demonstrate causal relationships with respect
6 to disease. So our company did rely,
7 obviously, very exclusively on that standard in
8 taking their position.

9 Q. Mr. Orlowsky, could you list for me,
10 if you would, five scientists not connected
11 with the tobacco industry who today contend
12 that it has not been proven that smoking causes
13 lung cancer?

14 A. I didn't say that any scientists
15 would take a view one way or the other. All
16 I'm saying is that there is a physical standard
17 of science which is accepted. By my layman's
18 understanding of all of this, it's an
19 acceptable standard of science that to
20 demonstrate the causal relationship, that
21 laboratory experimentation and identification
22 of contributing factors is a valid basis. I'm
23 not saying that -- there is no question that
24 the vast majority of the public health

1 authorities or all the public health
2 authorities accept the epidemiological standard
3 as a basis for making the determination.

4 Q. All right. Now, you talked about the
5 public's perception. Mr. Orlowsky, I want to
6 be clear on this. When you say Lorillard
7 admits that smoking causes lung cancer, do you
8 believe that smoking causes lung cancer?

9 A. Based on the epidemiological
10 standard, I do.

11 Q. I don't want to ask you based on the
12 epidemiological standard or based on the
13 Martian standard. Do you believe that smoking
14 causes lung cancer?

15 A. Yes, I do.

16 Q. All right. Do you believe that
17 smoking causes emphysema?

18 A. Yes, I do.

19 Q. Do you believe that smoking causes
20 coronary heart disease?

21 A. Yes, I do.

22 Q. Now, one of the factors,
23 Mr. Orlowsky, that changed Lorillard's position
24 down in Florida was that you had become aware

1 that, when Lorillard stated its old position
2 earlier in that trial, the jury had come back
3 with a big verdict against your company;
4 correct?

5 UNIDENTIFIED SPEAKER: Object to the form
6 of the question.

7 A. The jury found in Phase I of that
8 trial that they concluded by virtue of their
9 assessment of the evidence presented that
10 smoking caused certain diseases.

11 Certainly the jury's verdict played a
12 role in influencing my view and my process of
13 assimilation of all of the views towards
14 whether or not Lorillard's position would --
15 should be revised in that sense.

16 Q. Mr. Orlowsky, did you become aware of
17 an individual named Curt Judge who was
18 associated with Lorillard?

19 A. I'm aware of the name, yes.

20 Q. Okay. And do you know what his
21 position was in the 1970s at Lorillard?

22 A. I believe he was CEO.

23 Q. All right. And was he in a position
24 similar to yours in the company today?

1 A. I assume so, yes.

2 Q. Okay. And you are aware he was CEO
3 for a number of years?

4 A. Yes.

5 Q. Okay. Let's mark as next an April
6 21st, 1978, handwritten memo previously
7 identified by Dr. Spears at his deposition as
8 Mr. Judge's handwriting. This will be Orlowsky
9 3, I believe.

10 Let's look at the first page of these
11 notes dated April 21st, 1978, the paragraph
12 that's labeled one. Quote, we have again,
13 internal quotes, abdicated, closed internal
14 quotes, the scientific research directional
15 management of the industry to the, quote,
16 lawyers, unquote, with virtually no, no
17 underlined, involvement on the part of
18 scientific or business management side of the
19 business?

20 Now, assuming that what Mr. Judge said
21 correctly reflected his view, do you believe
22 that it is proper to run a tobacco company by
23 abdicating the scientific research directional
24 management of the business to attorneys?

1 A. I'm not sure I understand your
2 question.

3 Q. Assuming that what Mr. Judge said in
4 this statement is true --

5 A. Yes.

6 Q. -- that the industry had abdicated
7 the scientific research directional management
8 to the lawyers, is that a correct way to run a
9 tobacco company?

10 A. I can't comment on what happened in
11 1978 or what Mr. Judge was referring to
12 specifically other than obviously what's in
13 this handwritten note. So I really -- I don't
14 know what he was specifically talking about as
15 far as what this was -- what this involved. So
16 I can't comment on what he literally meant
17 here.

18 Q. All right. I'm asking you to assume
19 that what he said was true, that the industry
20 had abdicated the scientific research
21 directional management to the lawyers.

22 Let me ask you first, is that something
23 you would do today? Would you take your
24 direction on research from lawyers?

1 UNIDENTIFIED SPEAKER: Object to the form
2 of the question.

3 A. The scientists at Lorillard establish
4 the direction within the established policies
5 that either I input on or develop.

6 Q. So let me ask my question again.
7 Would Lorillard today take direction on
8 scientific research from attorneys?

9 A. Lorillard, as I said, would develop
10 their direction in the form of any science that
11 we are involved with on the basis of the
12 scientists' inputs consistent with company
13 policy. That is how we would do it today.

14 Q. Is that a yes or a no? Would
15 Lorillard would take its research direction
16 today from the lawyers?

17 A. I set the policies, so they would
18 take the research direction from a policy
19 standpoint from me. The scientists determine
20 from a technical standpoint what areas of
21 involvement would be appropriate. And that's
22 how we do it today.

23 Q. If, this is a hypothetical now, if
24 the lawyers were in fact controlling the

1 research direction of the industry in the
2 1970s, is that something that you would feel
3 you should apologize for?

4 A. Well, I can't answer that. I don't
5 know. When you say "in control," I don't know
6 what that means. What does that mean? Is that
7 bad?

8 Q. If lawyers were directing that
9 research data be destroyed, is that something
10 that you would be proud of?

11 A. It's not a matter of whether I would
12 be proud or not of something like that. It's a
13 matter of whether or not at the time, whatever
14 the circumstances were, it was the appropriate
15 thing to do,

16 It was certainly in compliance with all
17 the laws of the land, there was nothing illegal
18 or otherwise about it, then, if that was the
19 case, then that would be appropriate. I can't
20 even hypothetically -- I don't know in those
21 terms.

22 Q. In Lorillard today, if you learned
23 about it, would you permit lawyers to direct
24 your scientists to destroy research data on

1 smoking and health issues?

2 UNIDENTIFIED SPEAKER: Objection.

3 A. As I said, if there was -- it was a
4 responsible thing to do, there wasn't anything
5 inappropriate about it, I suppose that's
6 possible. I don't know.

7 I might add, if I may, that certainly we
8 do nothing or would not do anything on even the
9 most hypothetical basis that would be against
10 the law or not in compliance with prevailing
11 regulations that we have to deal with.

12 Q. Are you aware that, decades past, the
13 industry took the position in public that
14 whether smoking caused disease was an open
15 controversy?

16 A. I don't know the exact language the
17 industry used. I believe the industry's
18 position was that it hadn't been scientifically
19 established that smoking caused disease.

20 Q. And the industry said that publicly?

21 A. I believe so, yes.

22 Q. And now that you for Lorillard are
23 saying it's no longer a controversy, we now
24 agree that smoking causes disease, why isn't

1 Lorillard saying that publicly?

2 A. Because I think it's more than
3 adequately accomplished by virtue of the
4 Surgeon General's reports and Surgeon General's
5 communications, as well as any number of other
6 public health authorities and organizations.

7 Those are the groups that are best suited
8 in our minds to communicate that point of
9 view. And as I said and I will repeat again,
10 on every pack of cigarettes, we have a warning
11 statement. We are in effect communicating that
12 on every pack we sell.

13 Q. Do you think that people who in years
14 past heard the tobacco industry say it wasn't
15 proven, it was an open controversy, that they
16 don't have a right now to hear the industry
17 say, at least your company say, that there is
18 no longer a controversy?

19 UNIDENTIFIED SPEAKER: Objection.

20 A. I believe that, for many, many, many
21 years, the fact of the health issues associated
22 with smoking has been well established in the
23 public's mind. I think it is not necessarily
24 critical in any way as to what Lorillard's view

1 is.

2 And besides that fact, we are being
3 consistent with what we said in 1997; that we
4 will defer to the public health authorities.
5 If someone should ask me, I would give them
6 our -- state our policy. But I don't think
7 it's necessary or appropriate for Lorillard to
8 make that communications.

9 Q. Besides your testimony in the courts
10 of law, like this situation and down in the
11 Engle case, am I correct that Lorillard plans
12 to take no further action in any other forum to
13 announce publicly that it now agrees that
14 smoking causes lung cancer?

15 UNIDENTIFIED SPEAKER: Object.

16 A. As I said, our policy today is that
17 it is more appropriate for public health
18 authorities to communicate that message; and
19 that we are being consistent with our past
20 position of deferring to their approach to
21 communicating that information as the most
22 appropriate way to do so. And that is our
23 position.

24 Q. All right. I take it that Lorillard

1 is not preparing any pamphlet on its public
2 positions to disseminate?

3 A. We are not currently, no.

4 Q. Now, before you came to work for
5 Lorillard, you worked for another tobacco
6 company, R. J. Reynolds, correct, for about ten
7 years?

8 A. I worked for R. J. Reynolds Tobacco
9 Company for nine years.

10 Q. Do you know of any Lorillard
11 cigarette that is any safer than another
12 Lorillard cigarette?

13 A. No, I do not.

14 Q. Are low-tar cigarettes, in your view,
15 any safer to smoke than high-tar cigarettes?

16 A. Not in my view, no.

17 Q. We agree that smoking increases a
18 person's risk of getting lung cancer; correct?

19 A. Yes.

20 Q. With respect to that risk, does it
21 make any difference which brand of cigarettes I
22 smoke?

23 A. I don't believe so. I really don't
24 know.

1 Q. Do you know of a safe level of
2 smoking below which a person could smoke that
3 number of cigarettes a day and not be concerned
4 about getting cancer?

5 A. I have no idea.

6 Q. Are you familiar with the scientific
7 view, Mr. Orlowsky, that early detection for
8 cancer can be helpful in treating or curing the
9 disease?

10 A. I am generally aware of what you are
11 describing.

12 Q. Okay. Does Lorillard agree that
13 early detection of lung cancer is an
14 appropriate course to pursue?

15 A. I don't know whether that is -- I am
16 not a medical doctor, I think that's something
17 that doctors should address, not me.

18 Q. Okay. I was asking you as president
19 of the company what Lorillard's position is.
20 Does Lorillard as a company agree that early
21 detection of cancer is a worthwhile goal to
22 pursue?

23 A. I -- I think it would depend on the
24 circumstances. I don't know the answer to

1 that. I'm not a medical doctor, as I said.

2 Q. All right. Do you agree that, with
3 early detection, the chance of cancer being
4 cured increases?

5 A. I don't know.

6 Q. Do you believe that long-term smokers
7 should have regular checkups to determine the
8 state of their health?

9 A. I think that's up to the individual
10 involved and their physician. I can't respond
11 to that. I don't know specifically the answer
12 to that.

13 Q. Has Lorillard taken any action to
14 encourage its employees to have early detection
15 programs for cancer?

16 A. Lorillard has health coverage, and it
17 depends on what their doctors -- we don't get
18 involved in individuals' health or medical
19 practice. That's for their doctors and
20 themselves to decide.

21 Q. And you are in the Lorillard health
22 program?

23 A. Yes, I am.

24 Q. All right. As an individual, if you

1 were -- you had the unfortunate occurrence to
2 contract cancer, would you like to know that as
3 early as possible to assess your options?

4 A. Well, I suppose hypothetically, if in
5 fact they could identify without question that
6 I had cancer and there was no question about
7 it, if there was a 100 percent perfect cure for
8 it, I suppose that would be a good thing.

9 Q. All right. Now, what if there wasn't
10 a 100 perfect cure but, half the people, it
11 could cure, would it still be a good thing?

12 A. I think it would depend on the
13 circumstances of the individual and the doctor
14 and the patient.

15 Q. Let's put the cure rate aside.
16 Wouldn't you want to know if you had a
17 potentially terminal disease like cancer so
18 that you could put your affairs in order, for
19 instance?

20 A. Wow! Personally want to know?

21 Q. Yeah.

22 A. I don't know. I don't believe so.

23 Q. All right. Do you think you might
24 want to know if you had a potentially terminal

1 disease so you could do things that you have
2 been putting off in your life and get them
3 done?

4 A. Well, personally I try to do
5 everything I want to do while I can do it. So
6 it's not really a question in my mind.

7 Q. If there were things you have been
8 putting off, you wouldn't want to know if you
9 had a potentially terminal disease so you could
10 get to them?

11 A. I have no particular interest in
12 that.

13 Q. Has Lorillard ever contributed to any
14 effort to study any population of smokers to
15 determine if they have an increased rate of any
16 disease?

17 A. I'm not aware of it, if there was.

18 Q. Now, you mentioned, Mr. Orlowsky, in
19 our discussion earlier, Judge, one of your
20 predecessors, and I want to ask you about some
21 things that Mr. Judge said several years ago.

22 And I'm going to hand you first sworn
23 testimony of Mr. Judge given in the Cippolone
24 case on April 27th, 1984, and ask you, just a

1 few pages, to go ahead and look at that
2 excerpt, sir. I would give you a chance.
3 Mr. Judge says, Our position on smoking
4 and health is tremendously important?
5 A. Right.
6 Q. And going over to Page 251, he's
7 asked why.
8 He says, I think that's obvious.
9 He's asked again why it's obvious.
10 And he says, quote, Because, if we are
11 marketing a product that we know causes cancer,
12 I would get out of the business.
13 The question, Why?
14 The answer, I just wouldn't do it.
15 The question: Why? You couldn't live
16 with yourself?
17 Answer: I don't know how to answer it
18 any more fully.
19 And the question is repeated,
20 And Mr. Judge says, I wouldn't be
21 associated with marketing a product like that.
22 And he goes on, if cigarettes caused cancer, I
23 wouldn't be involved with them.
24 Mr. Orlowsky, having just reviewed

1 Mr. Judge's statements that cigarettes -- that,
2 if cigarettes caused cancer, he wouldn't be
3 involved with them, I want to ask you, as
4 president of Lorillard and having admitted that
5 cigarettes have caused cancer, that you have a
6 different view from Mr. Judge and you intend to
7 be involved with cigarettes and selling
8 cigarettes even though you know they cause
9 cancer.

10 First of all, am I correct you intend to
11 continue to be involved in selling cigarettes
12 even though you know that cigarettes cause
13 cancer?

14 A. I intend to continue in my position
15 as President and CEO of Lorillard selling a
16 product that is a legal product that adult
17 smokers can make and informed decision as to
18 whether they want to smoke or not. Yes, I do
19 continue -- intend to do that.

20 Q. All right. Look at Page 254 when
21 Mr. Judge is asked: If it was proven to you
22 that cigarette smoking causes lung cancer, do
23 you think cigarette smoking should be
24 marketed?

1 He answers no.

2 And the question, why.

3 Answer: I think it's perfectly obvious
4 from my previous testimony. Then he goes on,
5 no one should sell a product that is a proven
6 cause of lung cancer.

7 I take it you disagree with that
8 statement, sir?

9 Object to the form. Move to strike
10 counsel's reading other deposition testimony
11 into the record.

12 A. Again, I can't speak for Mr. Judge,
13 what he was responding to. All I know is if in
14 fact there was a constituent or component that
15 was demonstrated to be of concern in the
16 cigarette product that we could identify based
17 on research, then we would work as hard as
18 possible to remove that component or element.
19 So that if it was a problem, it might no longer
20 be a problem.

21 Q. With respect to the particular
22 statement made by Mr. Judge, your predecessor
23 once or twice removed, that, quote, no one
24 should sell a product that is a proven cause of

1 lung cancer, unquote, that's a statement that
2 you disagree with, isn't it?

3 A. I neither agree or disagree with his
4 personal opinion here. All I'm saying is that
5 our society as embodied by the laws of the land
6 says that it's a legal product. As long as
7 it's a legal product and I can comply with the
8 law, then I would sell that product.

9 (End of video.)

10 THE COURT: Does that complete the deposition?

11 MR. SEGAL: There are some counter-

12 designations.

13 MR. MILLER: Your Honor, they were included
14 within the context of what plaintiffs played.

15 THE COURT: So the counter-designations have
16 been integrated in what we have just seen?

17 MR. MILLER: That's correct.

18 MR. SEGAL: Your Honor, I need to correct
19 something for the record.

20 I'm sorry, Judge. I grabbed the wrong date.
21 That was Mr. Orlowsky, but the date of that
22 testimony was October 5th, 2000. When I looked at
23 the monitor, I said I read the wrong date in the
24 record.

1 THE COURT: That's fine.

2 MR. SEGAL: And that was in the Falise case
3 versus American Tobacco, et al.

4 The next deposition we wish to present by
5 videotape, Your Honor -- no, we are going to read
6 it. Nicholas -- this is Nicholas Brookes,
7 B-r-o-o-k-e-s, it was taken in the State of Florida
8 versus American Tobacco Company, et al. It was
9 taken on August the 9th, 1997, Your Honor.

10 Mr. Brookes was the chairman and CEO of Brown &
11 Williamson Tobacco Company from 1995 to 2000.

12 THE COURT: All right. This will be read as
13 opposed to video?

14 MR. SEGAL: Yes, Your Honor.

15 THE COURT: All right.

16 -- -- --

17 NICHOLAS GEORGE BROOKES

18 being first duly sworn and presented by videotape,
19 testifies and says as follows:

20 -- -- --

21 Q. Mr. Brookes, we've met previously.

22 My name is Ron Motley. Would you please state
23 your name, your age, and your address, please?

24 A. Yes, certainly. Nicholas George

1 Brookes. Do you wish me to spell that?

2 Q. No.

3 A. Okay. And my age is 46, and my
4 address is [DELETED]

5 Q. And what is your current position
6 with Brown & Williamson?

7 A. I'm the Chairman and CEO of Brown &
8 Williamson.

9 MR. SEGAL: Do you want me to read this right
10 now, Mr. Woodside? It's just a paragraph.

11 MR. WOODSIDE: We will read it.

12 MR. SEGAL: All right.

13 Q. Brown & Williamson Tobacco Company
14 filed sworn answers to interrogatories in the
15 State of Florida case with respect to whether
16 or not the case against smoking with respect to
17 lung cancer is not proven scientifically. And
18 they filed that answer on June the 14th, 1997,
19 and it was filed by King & Spalding, a law firm
20 in Atlanta, signed by Mr. Richard Schneider.

21 A. Uh-huh.

22 Q. Specifically saying that Brown &
23 Williamson contends that the case against
24 smoking is not proved. If by this statement

1 the State of Florida means that it has not been
2 scientifically established that smoking causes
3 disease.

4 And I can show you the answer if you
5 would like to see it. Have you read that? Did
6 I read that correctly?

7 A. Well, it says -- can I just read it
8 right through?

9 Q. Sure.

10 A. It says B&W admits that while
11 smoking -- cigarette smoking has been
12 identified in studies as a risk factor to
13 certain specific diseases, it has not been
14 scientifically established that smoking causes
15 disease in human beings.

16 Q. All right. Is that your -- the
17 position of your company, what is this,
18 August --

19 A. The 9th.

20 Q. -- 9th, 1997?

21 A. Yeah.

22 Q. Okay. Is it the position of Brown &
23 Williamson, Mr. Brookes, that it is impossible
24 to say that cigarettes sold by Brown &

1 Williamson has ever been a cause, not a risk
2 factor, but a cause of the disease in any of
3 your customers?

4 A. In any specific individual?

5 Q. In any individual customer.

6 A. I think that's a fair statement, yes,
7 on the basis of the scientific knowledge today.

8 Q. Well, how many American citizens have
9 developed disease caused by smoking your
10 cigarettes?

11 A. Well, I mean, we don't know. But you
12 said earlier it's impossible for us to
13 establish that smoking causes disease in a
14 specific individual scientifically, and that is
15 a correct scientific position.

16 Q. Well, has Brown & Williamson
17 cigarettes caused disease in a single human
18 being in America?

19 A. We don't know. I mean, obviously
20 there is statistics out that show strong
21 correlations between smoking and ill health.
22 But the scientific case hasn't yet finally been
23 proven.

24 Q. So we still don't know?

1 A. Well, we still don't know is probably
2 the right statement, although of course we are
3 spending hundreds of millions of dollars
4 researching this.

5 Q. Does cigarette smoking cause
6 emphysema?

7 A. I don't know.

8 Q. As you sit here today, you don't know
9 of any disease that is caused by cigarette
10 smoke; is that fair?

11 A. Well, no, that isn't entirely fair.
12 I mean what -- we say there is a risk, a risk
13 factor in smoking. There is a risk factor in a
14 number of diseases, and that's been established
15 by all this epidemiological work.

16 What we say is the scientific causation,
17 cause and effect, has not been yet shown by
18 either a mechanism being demonstrated as, for
19 example, with the -- you know, the story around
20 the P-53 gene. At this time last year, a lot
21 of excitement in the scientific community.
22 Here at last was conclusive evidence that
23 smoking caused cancer, if you recall that
24 episode. And you know, the theory was a

1 scientist or researcher had established that
2 benzopyrene in cigarette smoke somehow
3 implanted the P-53 gene and caused cancer. And
4 scientists were taking headlines in the
5 newspapers saying at least, you know, that all
6 the evidence against smoking has been
7 circumstantial and now we have conclusive
8 proof.

9 And of course since then we have realized
10 that the P-53 research really wasn't as good as
11 it ought to have been and that benzopyrene, of
12 course, is present in the environment and many
13 other sources and this was conclusive proof.

14 But, no, I mean, that is the position.
15 We know there is a risk factor. Smoking is a
16 risk factor in relation to a number of
17 diseases. But the mechanism has not been
18 identified as it's not -- has not been possible
19 to replicate in a laboratory that whole smoke
20 causes cancer, for example, in laboratory
21 animals. And these are holes, serious holes in
22 the science that we really need to understand.

23 Q. So can you tell me how many
24 carcinogens are in the cigarettes you smoke?

1 A. I was trying to give you a direct
2 answer, which is to say I know there are
3 thousands of components in cigarette smoke,
4 which I have mentioned already. Some of them
5 in sufficient quantities have been shown to be
6 carcinogenic, like nitrosamines, phenols,
7 poly-9-carbohydrates and substances with
8 difficult chemical names that I can't really
9 recall.

10 Basically these appear in microscopic
11 amounts and you require -- they need to be in
12 significant quantities in order to produce
13 carcinogenic effects. So I can't tell there
14 are any.

15 Q. If you assume 130,000 smokers died of
16 lung cancer in 1996, what caused those smokers
17 to get lung cancer, do you have a clue?

18 A. Can you give me the question again?

19 Q. If you assume that 130,000 American
20 citizens who were smokers died of lung cancer
21 in 1996, do you have a clue, as chairman of
22 Brown & Williamson, what caused those lung
23 cancers?

24 A. Well, smoking is a risk factor.

1 Smoking may be the cause. We are still trying
2 to find out how smoking is interrelated with
3 disease.

4 Q. Well, going back to Exhibit 1, the
5 Frank Statement, are you aware that Brown &
6 Williamson and American Tobacco Company
7 promised the American people that they would
8 set up something that was called the Tobacco
9 Industry Research Committee -- which later
10 became the Council for Tobacco Research;
11 correct?

12 A. That's right.

13 Q. And they promised that they would
14 conduct totally independent quality scientific
15 research into cigarette smoking and health?

16 A. That's right, yes.

17 Q. Well, what was the Council for
18 Tobacco Research doing owning a company that
19 provided legal research for law firms
20 representing cigarette companies in litigation?

21 A. I think I can answer your question,
22 if I may?

23 Q. Sure.

24 A. By saying that the CTR in my

1 experience in the two years I have been with it
2 produced wholly independent scientific
3 research, and has over the last 50 years done
4 just that, and I believe we have met the Frank
5 Statement's obligations 100 percent with regard
6 to the CTR. I'm very impressed by that
7 organization.

8 MR. SEGAL: And there is some counter-
9 designations, Your Honor.

10 THE COURT: All right.

11 MR. SEGAL: Oh, wait, I'm sorry, I have to
12 read -- yeah, sorry, Judge. I have another one
13 here.

14 Q. What's wrong with that idea that we
15 should know that we -- you should know that
16 your cigarettes are safe before you continue to
17 sell them?

18 A. Well, I think there is a duty, a
19 moral duty as well as probably a legal duty to
20 understand the product and to make the product
21 with the highest quality of materials possible
22 and to the standards of safety that are
23 possible for a cigarette. That certainly is my
24 belief, and that's what we seek to do.

1 I'm not quite sure whether that answers
2 your question, because I'm still struggling to
3 understand it.

4 Q. Do you agree that cigarette smoking
5 may contribute to cause lung cancer, for
6 example?

7 A. Did you say may contribute?

8 Q. Yes.

9 A. Yes, I say certainly it may
10 contribute. I mean, we don't know, but it may.

11 Q. Tell me what the present research is
12 here at Brown & Williamson?

13 A. Well, Brown & Williamson, of course,
14 funds the -- helps fund the CTR, which I guess
15 since the last 50 years has been out there
16 actively researching this issue.

17 And just for the record, I mean, as an
18 industry, we spent over eight hundred million
19 dollars in today's worth on that sort of
20 independent research. It's really a truly
21 gargantuan effort. And anyone who tries to
22 minimize it doesn't, I think, fully understand
23 what it's all about.

24 Q. My question was really directed to

1 in-house research.

2 A. Well, in-house research into a
3 mechanism or into laboratory testing?

4 Q. Into whatever you think would be
5 necessary for you to conclude that cigarettes
6 cause -- cigarette smoking causes disease?

7 A. Well, we funded -- I mean, we
8 undertook in the Frank Statement that what we
9 would do is fund truly independent first-class
10 research into that very issue. And that's what
11 we have done consistently over the last fifty
12 years and that's what we continue to do.

13 Q. Maybe I'm not making myself clear.
14 Are you doing any internal research at Brown &
15 Williamson to answer this question that you say
16 still exists on the causal relationship between
17 smoking and disease?

18 A. Directly internal research, no.

19 Q. Yes?

20 A. The specific issue on causal
21 relationship is focused through our effort with
22 the CTR, and has been over the last fifty years
23 since the Frank Statement.

24 Q. So Brown & Williamson has not ever

1 done any in-house biological testing then?

2 A. No. I would -- or I wouldn't accept
3 that because we have had the benefit of
4 literally a significant twenty years' worth of
5 biological testing that was undertaken within
6 BATCO, but that wasn't undertaken with a view
7 to identify a cause and effect relationship.
8 That was specifically undertaken with the view
9 to improving the product, to finding mechanisms
10 by which we could improve the significant
11 cigarette product.

12 Q. Does this company intend to change
13 the way in which it conducts business in the
14 future?

15 A. Well, I think we have always
16 conducted our business in a very ethical way,
17 and I certainly don't intend to change that.

18 Q. Same question with respect to the
19 ingredients in cigarettes. Is there any
20 regrets, anything that you would go back and
21 change and wish we hadn't done, that kind of
22 thing?

23 A. I can't honestly think of one. In
24 fact, one of the great things about BAT and the

1 BAT group of companies is that I'm not aware of
2 any situation where anyone has taken the
3 decision for convenience or for which was
4 otherwise the proper decision to take.

5 They have always -- it seems to me that
6 senior management in the BAT group of companies
7 have always as a first instinct wanted to make
8 the right decision. That's one of the reasons
9 I have stayed with the BAT group of companies
10 for the last twenty years.

11 Q. Okay. So no problem with the
12 ingredients in cigarettes for the last twenty
13 years?

14 A. I'm not aware of any reason where we
15 would want to go back and review it, no.

16 Q. So you would give your company a gold
17 star for its conduct with respect to the
18 regulation of its product?

19 A. I think Brown & Williamson, frankly,
20 is a company with the utmost integrity.
21 Everyone I know in Brown & Williamson is
22 someone I would, you know, love to have on my
23 side of the fence if there was some sort of
24 dispute going on.

1 They are great guys. We have worked in
2 the industry a very long time, and they have
3 done so, and they have stayed with the
4 industry.

5 And we have attracted high quality people
6 as well to the industry because it is an
7 industry and it's a company at least with the
8 highest possible integrity. I say that with
9 all sincerity.

10 Q. You understand that the manufacturer
11 has an obligation to test its product and to
12 make sure they are safe. You understand that?

13 A. I do understand that.

14 Q. Okay. And so you can't defer that on
15 whatever the -- these public health
16 organizations want you to do. You understand
17 there is no substitute; correct?

18 A. Correct.

19 Q. So you have no evidence, your company
20 has no evidence that any change that you have
21 made in your product over the last 40 years has
22 created any decreased risk of injury or disease
23 associated with your product?

24 A. I can't make that affirmative

1 statement, no.

2 MR. SEGAL: Thank you. There are some
3 counters, Your Honor.

4 THE COURT: All right.

5 MS. MIDDELHOFF: Good morning, ladies and
6 gentlemen. I'm Mary Jo Middelhoff and I'm
7 Mr. Woodside's partner representing Brown &
8 Williamson.

9 Q. How many years have you been with
10 Brown & Williamson or with any British American
11 Tobacco Company organization?

12 A. Well, I have joined British American
13 Tobacco, BATCO, in let's see, January of 1978.
14 So just under twenty years.

15 Q. And what is your educational
16 background, sir?

17 A. Well, I went to the university after
18 school and studied law at the University of
19 Birmingham. Then went on to the college of
20 law, which is a sort of way of getting
21 qualified to be an attorney in the U.K., and
22 subsequently practiced law for five years with
23 the firm of solace sitters in the city of
24 London.

1 Q. Mr. Brookes, how -- you have been
2 chairman and CEO of Brown & Williamson for how
3 long?

4 A. Well, just over two years. The first
5 week of May in 19 -- that's right, 1995.

6 Q. Well, wouldn't you -- would you agree
7 that currently, would Brown & Williamson agree
8 that the studies have shown that lung cancer
9 death rate is almost directly related to the
10 number of cigarettes consumed?

11 A. Well, my understanding is that the
12 epidemiologic work, I think there must be a
13 reference to the epidemiologic work that's been
14 undertaken into cigarette smoking, and there
15 has been a hell of a lot of it, as I think the
16 quote indicates. And that would seem to
17 suggest that the risks associated with smoking
18 are dose-related.

19 Q. Meanwhile, you sold 82 billion
20 cigarettes not knowing whether or not cigarette
21 smoking caused a single disease; is that right?

22 A. May I answer the question?

23 Q. Yeah.

24 A. Well, we sell cigarettes as a legal

1 product, and we sell them to consumers who are
2 well aware of the risks associated with
3 smoking. This is not something which people
4 aren't aware of. Since the 1600s, people have
5 been talking about disease relating to smoking.

6 MS. MIDDELHOFF: And I think the second to last
7 page of the second transcript.

8 MR. WOODSIDE: Thank you.

9 Q. Could you explain to us why you still
10 believe it's proper, knowing that there is this
11 risk, that the product is still sold? Can you
12 explain that in your own words?

13 A. Well, to some extent I think I
14 testified to that point on a couple of
15 occasions during the course of today.

16 But clearly there are many products that
17 do carry risks when they are used. And my
18 major concern is that the consumers of
19 cigarettes ought to know or be aware of those
20 risks. And my belief certainly is that the
21 entire population of America is fully aware of
22 the risks associated with smoking.

23 MR. WOODSIDE: Thank you

24 MS. MIDDELHOFF: Thank you.

1 THE COURT: Does that conclude the counter-
2 designations?

3 MR. SEGAL: It does, Your Honor.

4 THE COURT: I notice that the next presentation
5 is a video of the testimony of a gentleman by the
6 name of Spears.

7 MR. SEGAL: That's correct, Your Honor.

8 THE COURT: And that will consume 32 minutes.

9 MR. SEGAL: Yes, Your Honor.

10 THE COURT: All right. Why don't we take the
11 morning break now and then when we come back, we can
12 take the Spears deposition.

13 (A recess is taken.)

14 -- -- --

15 (In open court with a jury present.)

16 THE COURT: Be seated, please.

17 Ladies and gentlemen, things have been
18 happening in New York and in Washington that are
19 beyond description. Apparently planes have been
20 hijacked and the World Trade Center has been bombed
21 and the Pentagon, and this is all in a high
22 pitched -- it's surreal.

23 We don't know what's going on, but a lot of the
24 folks here have either friends or associates that

1 may be involved, so we are just going to adjourn for
2 the day and to get this thing -- I mean, too much is
3 going on to -- and I can't even explain it other
4 than the fact that something infinitely more
5 important today as far as lives and people are going
6 on that this requires us to sit back and see what's
7 happening.

8 We will see you tomorrow morning at 8:30.

9 (The session adjourns at 10:40 a.m.)

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